

**REMARKS**

Justification for the amendments is as follows. Claim 1 has been amended to recite variant sequences having at least 95% amino acid identity to SEQ ID NO:1 or SEQ ID NO:2. Support for this amendment is found in the specification at p. 3, lines 6-7. No new matter is added by this amendment, and entry of the amendment is respectfully requested.

In the Restriction Requirement, the Examiner requested Applicants to elect one of the following inventions:

Group I (claims 1, 2 and 4-8) drawn to an isolated nucleic acid molecule, or fragment or variant thereof, vector, host cell and method of producing a protein, wherein said nucleic acid molecule encodes an amino acid sequence of SEQ ID NO:1.

Group II (claims 1 and 3-8) drawn to an isolated nucleic acid molecule, or fragment or variant thereof, vector, host cell and method of producing a protein, wherein said nucleic acid molecule encodes an amino acid sequence of SEQ ID NO:2.

Groups III and IV (claims 9-12) drawn to a method of detecting expression of a nucleic acid molecule encoding a polypeptide of SEQ ID NO:1 or SEQ ID NO:2, respectively.

Groups V and VI (claims 13 and 14) drawn to a method of screening candidate molecules that bind a nucleic acid molecule encoding a polypeptide of SEQ ID NO:1 or SEQ ID NO:2, respectively.

Groups VII and VIII (claims 15 and 16) drawn to a polypeptide, or portion thereof, of SEQ ID NO:1 or SEQ ID NO:2, respectively.

Groups IX and X (claims 17 and 18) drawn to a method of screening candidate molecules that bind a polypeptide of SEQ ID NO:1 or SEQ ID NO:2, respectively.

Groups XI and XII (claims 19 and 20) drawn to an antibody that binds to a polypeptide of SEQ ID NO:1 or SEQ ID NO:2, respectively.

Groups XIII and XIV (claims 21 and 22) drawn to a method of diagnosing using an antibody specific for SEQ ID NO:1 or SEQ ID NO:2, respectively.

Within the above groups, the Examiner further required election of a single disclosed species from the following species considered by the Examiner to be patentably distinct inventions:

Claim 4: election of SEQ ID NO:3 or SEQ ID NO:20; a single species from SEQ ID NOs:4-11, a single species from SEQ ID NOs:12-19, a single species from SEQ ID NOs:21-39, or a single species from SEQ ID NOs:40-56.

Claim 13: election of a single species from (a) DNA molecules or RNA molecules, (b) peptide nucleic acids, (c) artificial chromosome constructions, (d) peptides, (e) transcription factors, (f) repressors,

and (g) regulatory molecules.

Claims 15 and 16: election of a single species from (a) SEQ ID NO:1, (b) an antigenic epitope of SEQ ID NO:1, or (c) a biologically active portion of SEQ ID NO:1.

Claim 17: election of a single species from (a) DNA molecules or RNA molecules, (b) peptide nucleic acids, (c) peptides or proteins, (d) mimetics, (e) agonists, (f) antagonists, (g) antibodies or immunoglobulins, (h) inhibitors, and (i) drugs.

Applicants hereby elect, with traverse, to prosecute Group II, which includes and is drawn to Claims 1 and 3-8 relative to a nucleic acid molecule encoding SEQ ID NO:2. With respect the election of species requirement imposed for claim 4, Applicants elect the species of SEQ ID NO:20, again with traverse. Applicants particularly object to the requirement for election of species within the recited polynucleotide sequences. The Examiner is respectfully reminded that proper restriction requires the following two conditions be met according to MPEP 803:

Restriction-When Proper:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01 Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 - Section 806.05(i));  
and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02 Section 806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02). (Emphasis added).

While the first element (A) of this requirement may be fulfilled in the present restriction, the second clearly has not. The Examiner has not presented any evidence that the examination of only two, structurally related, full length polypeptides of SEQ ID NOs:1 and 2, or the polynucleotides encoding them, would pose an undue burden of search. Furthermore the fragments of SEQ ID NOs:3 and 20, recited in claim 4 (b) are clearly disclosed as component sequences of SEQ ID NOs:3 and 20 which would be found in a search for polynucleotide sequences related to SEQ ID NOs:3 and 20. Likewise, the variant sequences of SEQ ID NOs:3 and 20, recited in claim 4 (c) are described in the specification as 80-100% identical to portions of SEQ ID NOs:3 and 20, and therefore would also be found in the same search. The methods of use of the polynucleotides of claims 1-4 which depend from and are therefore limited in scope to the polynucleotides of claims 1-4, as recited in claims 9-14 of Groups III-VI furthermore represent a coherent group that could be examined together with the claims of Groups I and II without undue burden. Finally, the requirement for election of a single species from the molecules or compounds recited in method of use claims 13 and 17 misrepresents the concept of election of species. Applicants submit that the patentable distinctiveness of the molecules or compounds recited in the claims

are not an issue for examination purposes as the claims are to a method of use of the compositions of Groups I and not to the species of molecules or compounds themselves.

Applicants therefore request reconsideration of the Restriction Requirement and examination of claims 1-14 in Groups I-VI with respect to all species recited. In the event that the Examiner maintains the Restriction Requirement, the Examiner is reminded that claims 9-14 of Groups III-VI are methods of use of the compositions of Group I that depend from and are of the same scope as the claims of Group I, and are subject to rejoinder on allowance of the claims of Group I in accordance with *Ochiai and Brouwer* regardless of their restriction (see Commissioner's Notice in the Official Gazette of March 26, 1996). Applicants reserve the right to prosecute the subject matter of non-elected claims in subsequent divisional applications.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,  
INCYTE GENOMICS, INC.

Date:

June 24, 2002

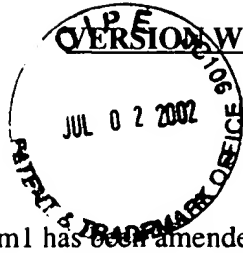
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim1 has been amended as follows:

1. (Once Amended) An isolated cDNA encoding a protein having the amino acid sequence of SEQ ID NO:1 or SEQ ID NO:2, or a variant of SEQ ID NO:1 or SEQ ID NO:2 having at least 95% amino acid identity to SEQ ID NO:1 or SEQ ID NO:2.

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